

1885-020

Lee Co.

Chancery Causes: W. B. Havelley vs. Hiram J. Yeary & wife

Havelley, Thompson, Beaty

CA-Contract Dispute

T-Property

-Deed

To the Hon. John A. Keely Judge of the
Circuit Court of Lee County Va

Your orator N. B. Haveley, humbly
complaining sheweth unto your Honor.

That he heretofore purchased from
John P. Thompson, and Maggie his
wife, among other tracts, a lot of $6\frac{3}{4}$
acres, of land situated near the Natural
Bridge, some four miles S. West from
Jonesville, known as the old Robert
Beatty mansion. He was placed in
the possession thereof and now re-
sides thereon. The lot of land, is
chiefly valuable for a house site, being
rocky & rough. The house, out-houses
and stable stands thereon, and make
its chief value. This lot and a part
of the houses had passed in descent to
been purchased by the said Maggie
Thompson while a single woman and
by her single sister Narcissa H. Beatty and
while so single they occupied the same
jointly together for a home. Narcissa
subsequently inter-married with one
Hiram J. Geary, after her marriage she
and her husband, by verbal contract
sold her half of said lot, for they
held it jointly each being entitled to
a moiety thereof, to the said Maggie

who continued to live upon it. The said
Mr. H. Geary, ^{and her said husband} as before stated sold to
Maggie her half for the price of \$200. and
on the 4th day of March 1883 Mrs Mary
Hovehey paid to Mrs Geary \$125, a part
of said purchase money. This payment
was made on the purchase of aresaid. ^{And}
^{thereupon} ^{was accepted by said Geary's wife on said} ^{contract and}
^{is} ^{herein} ^{with} ^{filed} ^{marked} ^{A.} as a
part hereof. Since that payment
the said Thompson and wife have ^{been}
debt to said Mrs Geary and her said
husband the full amount of the pur-
chase money, and demanded a deed
for said undivided moiety. But they
each refused to receive the same or
make said conveyance, but refuse to
keep and perform their said Contract.

They have not paid back or ten-
ded back the amount heretofore
paid them but still keep and hold
the same. Your ^{orator} alleges that said
house and lot are not capable
of partition without great injury to
the value thereof. The house stable and
out houses constitute the principal value
of the land, and are not therefore
susceptible of division. But if
found capable and deemed ^{advised}

able, that object will, be embraced
in this bill. Your^{2d} alleges that this
moiety thus sold by Mar. H. Yeary was
at the time she so sold it her own
separate estate, and that the legal title
to said moiety vests in her. That at
the time she so sold it, she could
lawfully do so under & by virtue of
the laws to protect married women's
rights lately enacted by the Virginia
Legislature. That it is expressly
so enacted and the right to sue for
the enforcement thereof expressly
given. This bill has therefore for its
main object the specific executing
said Contract of purchase, your orator
as the vendee of said Thompson's
wife being willing ready and
able to do & perform all stipulations
undertakings and agreements lawfully
to be done & performed by them.

But if mistaken in this relief
the leading object sought, then he is ad-
vised the \$1245, so paid as aforesaid
is a lien upon said moiety, which
he here seeks to enforce by a sale of
so much thereof as may be found nec-
essary to pay the same back & interest

Your crater further alleges that the permanent improvements put upon said lot by said Thompson and your crater far exceeds the one moiety of the reasonable value & profit.

When said \$145, and interest shall be fully paid and discharged then your crater should be be mistaken in his right to enforce said Contract of purchase specifically, has for a further object the sale of said lot all together and a division of the proceeds of sale, equally after the payment of \$145 purchase, and the costs of sale. If mistaken in this or in his rights thus to proceed then he asks that partition thereof be made equally between your crater and the said Jas. H. Geary.

The premises considered your crater prays that Hiram J. Geary and Jas. H. Geary his wife be made parties defendants to this bill or answer its allegations upon oath and upon a final hearing said Contract of purchase be specifically performed and said Geary & wife compelled to convey said

moiety of land to your orator on his
payment of the residue of the pur-
chase money which he hereby ten-
ders and has tendered heretofore &
is still ready to performe, or if
mistaken in this that said lot
be sold and of the proceeds of
the said sale your orator be paid
one half and out of the other be
reimbursed for his said \$148; here-
tofore paid; and for one moiety of
the permanent improvements
erected by your orator on said
Thompson since said sale - and
for all other further & general
relief.

Richard Duncan & Or - & A. S. Pickens

b 6.83
 A 15.00
 S 1.00

Defts b 22.83
 1.30
 \$24.13

Defts recover atty fee
 of \$30.00 and
 55¢ with int from
 4 March 1885.

A. B. Havelley

2 3 Bill Chas

Hiram J. Yeary wife

1884 June 28 Bill Filed
 " July Spd 210, & L. N.
 " Aug. 12. D. N. Confd
 and cause set for hearing
 by the Plaintiff
 " Aug. Decree & cont'd
 1885 Mr. Decree final

To the Hon. John A. Kelly Judge of the Circuit Court of Lee
County Virginia:

The separate answer of Hiram J. Geary to a bill
exhibited in this honorable court against him and his wife Narcissus
H. Geary by Napoleon B. Haverly:

This respondent says that the Plaintiffs bill is not sufficient
in law for him to leave and maintain the same against him
and of this he leaves the judgment of the court, whether he shall
be required further to answer the same. But if a further answer
be required at his hands answering he says that for any thing
he knows it may be true that John P. Thompson and Maggie his
wife have bargained and sold to the plaintiff the lot of land referred
to in the plaintiffs said bill. described as lying near the Natural Bridge
in Lee County V^a. and about 4 miles West of Jonesville:

It is also true, that the old Mansion house of Robert Benty ~~stand~~
some 35 years ago, and the stable & other out houses stand on the $\frac{6}{4}$ acre lot
his stated by the plaintiff, and it is also true, that said lot is chiefly
valuable for a site for a dwelling house, being rough and rocky but
at the same time a desirable place to live and convenient to wood & water,
a great part of its present value consists of said old Mansion house and
the out houses thereon. And it is perhaps also true that the plaintiff was
put in possession thereof, and if not, he has taken possession for his own use
the same.

It is also true that said lot of land was a part of a large
tract, which at said Robert Benty's death descended to his heirs at law
of whom Maggie Thompson and respondents wife are two, and by a
partition thereof said lot of land was assigned jointly to said Maggie &
respondents wife (used and occupied by them as a home until Oct 1882)
in addition to the separate parcels assigned them respectively:

It is true that this respondent married Narcissa St. Beatty in the fall of 1882 and soon thereafter Maggie Thompson the St. Beatty offered to purchase respondents wife's interest in said $6\frac{1}{2}$ acres of land & houses & when his said wife consulted with respondent as to what she should do in the premises and respondent then informed her that so far as he was concerned he could neither say or have anything to do with or in the sale thereof, that the title was in her, and the land had descended to her from her father and that she could do as she pleased therewith, and either sell or refuse to do so as she thought proper; But after some time, at the urgent and often repeated requests of said Maggie, respondents wife reluctantly and apparently against her will gave her consent to let her sister the said Maggie have her interest in said lot of land at the price of two hundred dollars, and the said Maggie thereupon paid respondents wife \$145.00 and respondent then at the request of said parties wrote a receipt for that sum when his said wife signed the same.

These being the facts respondent avers that he made no contract with any one directly or indirectly, in reference to said land; and hence he had no contract to observe and keep, or to disregard and fail to perform, and is not in any way liable to the plaintiff or John P. Thompson wife for anything. Respondent admits the fact that recently said Thompson and wife, or the plaintiff through them have offered to pay respondents wife the balance of the purchase money due her and it is true that respondents wife refused to receive the same or to make a deed for her interest in said lot either to the plaintiff or said Maggie Thompson and ^{so} far as this respondent is concerned, he could not have carried out his wife's contract, even if he had desired to do so ever so badly.

This respondent says it is also true that he and his wife have

not paid back to Mrs Thompson or any one else the \$145.00 paid by Mrs Thompson to Respondent's wife as aforesaid, and the reason they have not done so, is because Mrs Thompson would not receive it, and respondent avers that he and his wife or one of them have time and again offered to pay back said purchase money, and respondent and his wife are now ready and willing to pay the same back to Mrs Thompson whenever she will receive it, and respondent now here tenders her the same. The plaintiff's allegation that respondent and wife would not, and had not offered to pay back said purchase money is not true, and is directly in the teeth of the fact, for as above stated respondent and his wife have offered to pay it back, and are still ready and willing to pay it back whenever Mrs Thompson or her husband or the plaintiff for them will receive it.

Respondent says said lot of land is not well situated for a partition thereof, but he is of opinion that it can be divided without material injury to either share and he has nothing to allege in delay of such partition but on the contrary he prays that the same be made.

While respondent does not admit that said \$145.00 paid his wife by Mrs Thompson is a lien on his wife's interest in said lot, yet he is willing that the same be so treated, in the event that he and his wife fail and neglect to pay back said sum when authorized so to do, or Mrs Thompson will receive it.

Respondent says it is true that at the time his wife sold her interest in said lot, she was the owner of one moiety thereof, for the legal title was and is still in her, the same having descended to her from her deceased father. And since a married woman can only by virtue of statutory aid, divest herself of such title, the mode of proceeding to attain that object must be in strict conformity thereto, and as

respondents wife can only convey her title along with her husband by declaring that she signs the deed willingly and does not wish to retract it, And she not being willing to sign such deed, and make such declaration as the law requires, And no obligation resting on this respondent to join with his said wife in making such conveyance Respondent is advised that a court of equity will not undertake to compel his wife and co-defendant to specifically execute her said supposed contract; notwithstanding the act lately passed by the legislature of Virginia known as the Married Womens act, referred to by the plaintiff in his bill, but on the contrary will set aside said supposed contract and place the parties in the same condition they were in before entering in to said contract.

Respondent having answered as fully as he is advised it is material he should answer he hereby denies each and every allegation in said bill not heretofore denied confessed and avowed And he now prays that said bill be dismissed and respondent decreed his costs

Morison T Morgan

Henry J Morgan

I do swear that the statements of this answer so far as made on my own knowledge are true and so far as made on information obtained from others I believe them true so help me God.

Hiram J Geary

Sworn to before me by Hiram J. Geary
this 22 day of August 1884.

George Holliday J. P.

Hiram J. George

Advs. } Answer
Case

N B Hardy

Filed in open Court
by leave thereof Aug.

27/884

J A Hyatt cc

To the Honorable John A. Kelly Judge of the Circuit Court
of Lee County Virginia;

The Separate Answer of Narcissa H. Garry to a Bill
filed in this Honorable Court against her and her husband Hiram F.
Garry. by Napoleon B. Stawley.

This respondent says that the plaintiffs bill is not sufficient
in law for him to have and maintain the same and of this she
seeks the judgment of the Court. Whether she shall be required further
to answer the same. But if required further to answer, answering
says, that for any thing she knows John P. Thompson and Maggie his
wife may have contracted and sold to the Plaintiff the lot of land lying
near the Natural Bridge in this county. Some 4 miles West of Newville
containing $6\frac{3}{4}$ acres.

It is also true that the old Mansion house of Robert Beatty who
died some 35 years ago. stands on said lot of land together with the other
out houses and stables.

It is also true that said lot of land is chiefly valuable on account
of said building being situated thereon, and because it ^{is} suitable and convenient
and every way desirable for a site for a residence although rough and
rocky and is convenient to wood water.

It is perhaps true that the plaintiff has been put into the possession
thereof, and if not so put, he has taken possession, for he now occupies the
same.

It is also true that said lot of land constituted a part
of a large tract of land owned by Robert Beatty in his lifetime and
which at his death descended to his heirs at law of whom Maggie
Thompson and this respondent are two, and by a partition of said
large tract among said heirs, in addition to the separate lots or parcels
assigned Mrs Thompson and respondent, said lot of $6\frac{3}{4}$ acres was assigned
them jointly in order to secure a home, and the same was used as

such by Mrs Thompson and respondent until the fall of 1882

It is also true that this respondent is married with Hiram J Geary her co defendant about the month of Oct 1882

Soon after respondents Marriage as aforesaid the said Maggie Thompson (then Beatty) proposed to purchase respondents interest in said lot of land, and respondent at first refused to sell or part with the same on any terms, and respondent informed her husband of the offer made to her to purchase her said interest and asked his advice in the premises but he declined to give respondent any advice or opinion touching the matter, saying that the land was mine and that so far as he was concerned I could do as I pleased therewith

Mrs Thompson was then unmarried, and this respondent then thought she would in all probability so remain, and with a view to aid her in her then condition to secure her a home, at her request and after repeated importunities so to do, respondent reluctantly and against her will, and better judgment, consented and agreed to let Mrs Thompson have her moiety of said lot of land, at the price of two hundred dollars and Mrs Thompson then paid respondent \$145.00 and respondent gave her a receipt for the same, and this receipt it is supposed is filed with the plaintiffs bill as exhibit (A) or rather ^{was it} mentioned as such but not filed

Respondent says that at the time she so consented and agreed to sell her interest in said lot of land as well as now she was and is an unmarried woman, and being such, was then as well as now, incapable under the law of the land of entering into any contract by which she is bound (except to join with her husband in making a deed of conveyance)

Since making the sale as aforesaid the said Maggie has intermarried with said John P. Thompson and left the old mansion house and has attempted to sell the same to the plaintiff, and by doing so, has defeated the object had in view by respondent in so agreeing to sell to her.

The price so agreed to be taken for respondent's interest in said lot, is much below its cash value, and but for the reasons before given would not have been agreed to be accepted by respondent, & since these reasons have all been removed, the price greatly inadequate and being advised that she is not bound by said contract, respondent has determined ~~and~~ is not willing to carry out said contract, but is willing to pay back to Mrs Thompson the \$145.00 paid respondent.

Respondent admits that said Thompson and wife, or the Piff through them, have recently offered to pay the balance of the purchase money, and it is also true, for the reasons already stated, that respondent would not receive the said purchase money, or make to the Piff, or Mrs Thompson a deed for her interest in the land. And it is likewise true that respondent refused to carry out said contract.

Respondent says it is also true that she and her husband have not paid back to Mrs Thompson or her husband, or the plaintiff said \$145.00 and the reason they have not done so is because Mrs Thompson and her husband and the plaintiff would not receive it, and respondent avers that she and her husband, have offered, and now offer again and have at all times been willing to pay back the same whenever Mrs Thompson husband or the Piff will receive it.

Respondent says the plaintiff allegation is not true, when he says "that she and her husband would not, and had not offered to pay back said purchase money." the truth is directly in the teeth of that statement. and is as before stated.

Respondent admits that said lot is not favorably situated for a division thereof, but she is informed and believes that a partition thereof can be made so as not to injure materially the value thereof, and she desires that the same be partitioned.

Respondent is unwilling that her interest in said lot of land be sold, and since her interest is equal to that of the plaintiff she is inclined that a court of equity will not forcibly sell her interest against her will simply to gratify the Plaintiff when his interest in the land is no greater than respondent's.

While respondent does not admit that said \$145.00 constitutes a lien on her Morisy of said lot of land still she is willing that the same be so treated. if she and her husband fail or neglect to pay back the same when the parties will receive it or your Honor will so order.

At the time respondent so reluctantly and unwillingly consented to sell her said interest to Mrs Thompson, the title to one half of said lot was vested in her and is still in her, and hence it is true as stated by the plaintiff, that it was respondent's property at the time.

At the time of making said contract, respondent was a married woman and is now a married woman and she claims all the protection which the law throws around that class of the community.

Respondent admits that a court of equity has the power to compel her even against her will to make a deed conveying her interest in said land to Mrs Thompson or the plaintiff, and while she admits its power as just stated. Still she says that it is beyond the power of any court to so far control her own independent will as to now make her execute such a deed willingly and in such manner as that she could not want to recall and retract it. *

Respondent having now answered the plaintiff's Bill as fully as she is advised it is material for her to answer she denies each and every allegation therein not before denied confessed and avoided and now prays that the plaintiff's bill be dismissed and respondent cleared her cost.

Morrison & Morgan }
H. J. Morgan } For Respondent.

I do solemnly swear that the statements in the foregoing answer so far as made on my own knowledge are true and so far as made on information derived from others I believe them true so help me God.

Narcissa H. Geary

Sworn to before me the 22 day of August 1884 by
Narcissa H. Geary.

George Holliday J. P.

Narcissus H. Geary

ads } Separate Answer
3

N B Havely

Filed in open court
by leave thereof
Aug. 27 1884.

J. A. Hyatt

N. B. Hussey

Plff.

vs

Hiram J. Geary & wife

Defts

} In Chy.

This cause came on this day to be finally heard on the papers heretofore read in the cause, and the report of Court H. J. Morgan showing the execution of a deed of conveyance of the defts interest in the $6\frac{1}{4}$ acres of land in the bill of foreclosures mentioned to the plaintiff and said report being accepted to and said deed being seen & inspected by the court.

On consideration of all which it is adjudged ordered & decreed that said report and deed be confirmed, and the plff will pay said Morgan \$2.50 for the execution of said deed which shall be taxed as part of the costs of suit. And no further action being necessary the parties are here dismissed & the cause stricken from the docket.

N.B. Hawley

as { Decm No 3 final

Revised Census of the
March Term 1883

End of page 427
Hyatt C C

Enter this
Mar 26 1884
Jn A K

N. B. Havely

Poff.

vs.

} In Chancery.

Hiram J. Geary & Narcisus H. Geary his wife Df'ts }

It appearing to the court by a paper filed in the cause marked (A.B.) that since the last term of the court that the parties had mutually settled the matters involved in this suit, Pursuant to the terms of said settlement, and the consent of parties in open court it is now adjudged ordered and decreed that the plaintiff N. B. Havely pay to the dft. Narcisus H. Geary \$55.00 the balance of the purchase money for her interest in the $6\frac{3}{4}$ acres of land in the bill and proceedings mentioned with legal interest thereon from the 4th day of March 1883. till paid, and that said Havely also pay all costs of this suit including an attorney fee of \$30.00 and execution is awarded out ^{after 60 days from date} Geary and wife for the sums decreed them against said Havely. And it is further adjudged that the Poff. Havely is entitled to a specific execution of the contract in the bill mentioned on the part of said Geary & wife. And to attain this end, pursuant to said agreement it is adjudged ordered & decreed that Henry J. Morgan be appointed a commissioner for the purpose who will convey to the plaintiff all the undivided right and title of Hiram J. Geary & N. H. Geary in and to the $6\frac{3}{4}$ acres of land in the bill mentioned with covenants of special warranty. and said commissioner will report his action to the court, and until the coming in thereof the cause is continued.

N. B. Hasely

25 { Decm No. 2

Hiram J. Geary & wife
March Term 1885

Entered page 419

J. A. Syatt & Co.

Enter this

Nov. 25 1884

D. S. K.

things among those entitled. ~~He will~~
~~also ascertain what if any person-~~
~~ment improvement, have been~~
~~made thereon since the same has~~
~~been held by Maggie E. Thompson~~
 receive the testimony taken by him to writings of the same
 or for himself ~~report~~ ^{report} any
 facts deemed pertinent by himself or
 required by either party, to this Court
 at its next term and the cause
 is continued.

W. B. Hareley

2
 Decree 101

Wm. F. Yeaman
 Aug. 9. 1884

Entered Aug 29. 1884
 on page 412. J. B. Wharton
 H. F. Morgan

Enter
 Aug. 1884

Chad 156

N. B. Hawley

Plff

vs

In lry

William J. Geary wife

Defd

To the Hon. John A. Kelly Judge of the Circuit Court
of Lee County Virginia:

Pursuant to your decree entered in this case, on
the 25 day of March 1885, I as commissioner appointed
thereby have made executed and acknowledged for record
a deed, conveying to the plaintiff Hawley, all the
undivided right title interest of the deftd Geary wife
in the 6 $\frac{3}{4}$ acres of land in the bill of proceedings mentioned
with covenants of Special Warranty (See deed filed A)

Respectfully submitted.

Henry J. Morgan Comr.

N. B. Harely

as. } Com. Report of deed.

Hiram G. Gentry & wife

Filed March Term 1885

J. A. G. Hyatt & Co

This deed made this 26th day of March 1885 between
Henry J. Morgan commissioner & of the first part, and
Napoleon B. Havely of the second part all of the county
of Lee State of Virginia Witnesseth that whereas by a
decree of the circuit court of Lee County rendered on the
day of Nov. 1884 in the chancery cause of N. B. Havely
plaintiff against Hiram J. Geary and Narcissus H. Geary
defendants in said court pending, the said Morgan was
appointed a commissioner for the purpose and directed
to convey on the part of said Geary and wife, all their
undivided right title and interest in and to the 6 $\frac{3}{4}$ acres
of land in the bill and proceedings mentioned to the said
N. B. Havely with covenants of Special Warranty. In
consideration of the premises, and of one dollar to him in
hand paid, the receipt of which, is hereby acknowledged
the said Morgan commissioner as aforesaid on the part of said
Geary and wife, doth by these presents give grant sell and
convey unto said Havely all the undivided right title and
interest of said Geary and wife in and to the 6 $\frac{3}{4}$ acres of land
with its appurtenances in the bill and proceedings mentioned
lying and being in said County near the Natural Bridge, the
same being a part of the old Robert Beuty farm and on which
is situated the old Homestead To have and to hold the same
unto said Havely and his heirs forever: And the said
Morgan covenants that he will warrant specially the interest
in the land hereby conveyed. Witness the following signature & seal

Henry J. Morgan Commissioner. (Seal)

Virginia Lee County to wit

I John R. Gibson clerk of the county court of Lee county
in the state aforesaid do certify that Henry J. Morgan whose
bearing date ~~March~~ 26th 1854
name is signed to the foregoing deed personally appeared
before me in my office and acknowledged said writing
to be his act and deed.

Given under my hand & seal this 26 day of Feb. 1884.

John R. Gibson clerk

N. B. Hawley

Form { Deed 12-62 1880

Henry J. Morgan Clerk

(A)

N B. Harvey Peff
vs. } In Lohy.
Hiram J. Geary & wife Defts }

The parties to this suit in order to settle the matters involved make the following agreement

The Peff agrees on his part to pay the defendants N B. Geary \$55.00 the balance of the purchase money with interest thereon from the 4th day of March 1883 and all costs of this suit including an attorney fee of \$30.00

The defendants on their part agree that the sale of their interest in the $6\frac{3}{4}$ acres of land as claimed in the bill be confirmed while the defendants will not execute any deed of conveyance, yet they give their consent that the court appoint a commissioner to convey on their part.

Nov 10, 1884.

N B. Harvey

Hiram J. Geary

For H. Geary

Richard D. Dineen & son
attys for Peff

H J Morgan atty for Defts

N. B. Hawley

with agreement

Hiram & N. H. Young

Filed Nov 18 1884

J. A. Abbott
cc

(A. B.)

Recd Mch 4th 1883

from the hands of Mary Harley
One hundred & Twenty five
dollars as a payment on
my part of some place

Wm. H. Geary

Credit - Apr 22 of \$20.00

Bal. due say about \$59.50
as of Jan'y 22 - 1884.

THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting :

We Command You to Summon

Hiram J. Yeary
+ *Mar. H. Yeary* his wife

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in

July

next being rule day to answer a bill in chancery exhibited in our said Court against

them

by

W. B. Hauley

And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This

28th

day of

June

1884

, in the 10⁸

year of the Commonwealth.

J. A. G. Hyatt

Clerk.

P.R.D.V.O

N. B. Hawely
vs ³/₄ Spa in Chay

Hiram J. Yeary & wife

To July Rules 1884

Executed by deliv-
ering an office
copy of the within
Spa, to Hiram J.
Yeary & Var. Of
Yeary his wife
on June 30th 1884.

S. H. Ewing
D.S. for R. D. Flannery
S. L. C.